No. 87-531

Supreme Court, U.S.
FILED
NOV 10 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

JULIA McCAIN LAMPKIN ASAM, Ph.D. J.D.

Plaintiff/Appellant

vs.

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DeSHAZO

Defendants/Appellees

APPEAL FROM THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

MOTION OBJECTING TO "APPELLEES' MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF"

BRIEF OPPOSING MOTION TO DISMISS

Julia McCain Lampkin Asam, Ph.D., J.D.
P.O. Box 1022
University, Alabama 35486

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

For Questions Presented the Appellant incorporates the Questions Presented in her Jurisdictional Statement Brief docketed as 87-531.

This instant brief is a motion re-written after being filed on October 30, 1987 as"Motion Objecting to "Appellees's Motion to Dismiss Appeal and Brief in Support Thereof" as requested by Mr. Francis J. Lorson to be in conformity with Rule 33, since Mr. Lorson returned the original "Motion ... which was typed on 3 pages of 8½ x 13 paper.

PARTIES BELOW

The Plaintiff/Appellant is Julia McCain Lampkin Asam (Julia L. Asam).

The Defendants/Appellees are Lee County District School Board, Chairman, 2055 Central Ave., Fort Myers, Florida 33901; Mrs. Rayma C. Page, 2412 Kent Ave., Fort Myers, Florida 33907; Mr. Howard DeVore, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, 2212 River Oak Lane S.E., Fort Myers, Florida 33905; Mr. John F. Beckett, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent DeShazo, 5084 Westminister Dr., Fort Myers, Florida 33907 and the attorney for the Lee County District School Board (Lee County School Board) is Mr. Harry A. Blair, 2138-40 Hoople St., P.O. Box 1467, Fort Myers, Florida 33902.

TABLE OF CONTENTS

	Page
Questions Presented	i
Parties Below	ii
Table of Contents	iii
Table of Citations	iv
Statement Regarding Oral Argument and requests to Write Merits Brief ...	v
Opinions Below	3
Jurisdiction	4
Constitutional Provisions and Statutes Involved	4
Statement of the Case	5
Motion Objecting to "Appellees' Motion to Dismiss Appeal and Brief in Support Thereof"	5
Argument and Substantiality of Questions	9
Conclusion	10
Certificate of Service	
Appendix (Index to Appendix in front of Appendix).	

TABLE OF CITATIONS

Page

Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist. 1983) 7,10

Gertz v. Robert Welch, Inc. 680 F. 2d 527 (7th Cir. 1982). 8,9

See Jurisdictional Statement 87-531 for additional Citations.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. ___

Julia McCain Lampkin Asam, Ph.D., J.D.

Plaintiff/Appellant

vs.

LEE COUNTY DISTRICT SCHOOL BOARD: RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, AND VINCENT L. DeSHAZO

Defendants/Appellees

APPEAL FROM THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

The instant case is a 42 U.S.C. §1983 action because the Lee County School Board through its agent, Mr. Vincent DeShazo, was acting under color of state law when he created the false unemployment form (P.Ex.

9) which on its face stated "discharged for misconduct connected with work" when there was no misconduct and Mr. DeShazo was under constructive notice there was no misconduct since he was the custodian of the personnel file of Dr. Asam at the Lee County School Board. Mr. DeShazo immediately after the Unemployment office called corrected the unemployment form (P. Ex. 11) which was NEVER in the personnel files of Dr. Asam at the Lee County School Board. Before this lawsuit, Lee County School Board was notified that a false document (P. Ex. 9) was in the Personnel file of Dr. Asam and were requested to remove said false document (P.Ex. 9). However, Mr. DeShazo failed to remove the file (P. Ex. 9) and failed to write a note and attach to the file that the said false document (P. Ex. 9) had been corrected at the unemployment office (P. Ex. 11 which was never in the personnel file of Dr. Asam). The point is the instant case which started as a mistake that was corrected at the un-

enployment office and not at the personnel file of Dr. Asam in the Lee County School Board escalated to stigmatization of Dr. Asam's teacher's reputation when the Lee County School Board acting under color of state law failed after notice to remove the said false unemployment document (P.Ex. 9) which on the face of the document stated, "discharged for misconduct connected with work" when there was no misconduct by Dr. Asam, and the Lee County School Board failed to attach a note to said false document (P. Ex. 9) stating that it was false and had been corrected at the unemployment office. This stigmatization of Dr. Asam's teacher's reputation was a violation of her liberty rights under the Fourteenth Amendment to to the U.S. Constitution and a violation of her due process rights under the Fourteenth Amendment to the U.S. Constitution.

OPINIONS BELOW

See Jurisdictional Statement Brief 87-531 p. 9 and Appendix A-H.

JURISDICTION

The jurisdiction of the Supreme Court of the United States to review the final judgment order of the U.S. Court of Appeals, Eleventh Circuit, is invoked under 28 U.S.C. §1254, as appeal or Writ.

The Supreme Court of the United States has jurisdiction under 28 U.S.C. §2106.

The Supreme Court of the United States has jurisdiction under 42 U.S.C. §1983 and 28 U.S.C. §1343(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution: Amendments I, V, VII, and XIV - "liberty and due process". (See APPENDIX I for quotes of Amendments.)

Federal Statutes:

42 U.S.C. §1983

28 U.S.C. §1503

28 U.S.C. §1254

28 U.S.C. §2106

28 U.S.C. §1343(3)

State

Florida Statute 119.011(1)

STATEMENT OF THE CASE

This appeal is concerning a case of deprivation of liberty rights without due process under the Fourteenth Amendment to the U.S. Constitution with redress under the 42 U.S.C.A. §1983 and pendent libel per se with actual malice.

The key to understanding the law in the case is to first understand the facts in the instant case.

See Jurisdictional Statement 87-531 p. 14 for Statement of the Case.

MOTION OBJECTING TO "APPELLEES' MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF"

Comes now the Plaintiff/Appellant, Julia McCain Lampkin Asam, Ph.D., J.D., and writes this "Motion Objecting to 'Appellees' Motion to Dismiss Appeal..." because Mr. Harry A. Blair, Attorney for the Defendants has misstated the facts and Mr. Blair has perpetrated a fraud on the Honorable Court by referring to a "PHANTOM DOCUMENT" was never a public

record.' (p. 9 of Mr. Blair's Brief filed the 23rd October, 1983), when in fact, the alleged "PHANTOM DOCUMENT 34" was a figment of Mr. Blair's imagination in the first place (see p. 9a of JURISDICTIONAL Statement by Julia McCain Lampkin Asam) since the documents of the defendants only went to #27 (See R4 NR 154 2/03/86 entitled EXHIBIT LIST BY Deft." in Docket sheet of the U.S. District Court, Middle District of Florida case no. 82-91 CIV F.M. 17 -- the number of the instant case in the U.S. District Court, Middle District of Florida).

The Plaintiff/Appellant incorporates all the "JURISDICTIONAL STATEMENT" submitted to this Honorable Court and the Honorable Court does have jurisdiction to consider case no. 87-531 as an appeal especially under 28 U.S.C. §1254 (2) as stated in the "JURISDICTIONAL STATEMENT" docketed September 26, 1987.

Mr. Blair in his "Statement of the Case" falsely states that "Ms. Asam's reputation

had been stigmatized in the process of non-renewal of her annual teaching contract" when the document known as (P. Ex. 9) was created after Dr. Asam's contract expired on June 9, 1978, when P.Ex.9, the false unemployment form containing on the face of the document that Dr. Asam was "discharged for misconduct connected with work", was dated June 15, 1978. The stigmatization took place when the Lee County School Board failed to remove the said false document (P. Ex.9) and the said P.Ex.9 which was retained in the personnel file of Dr. Asam when the personnel file of a teacher in Florida is a public record (See Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist. 1983).

Mr. Blair was correct on p. 3 that the "Personnel Director immediately made a telephonic correction and advised the State that Ms. Asam had not been discharged for misconduct connected with her work"... However, the correction was ONLY made at the unemployment

office file and there was NEVER a correction in the personnel file of Dr. Asam stating that P. Ex. 9 was not correct. Dr. Asam's teacher reputation was stigmatized so that she did not receive a transfer and did not receive a teaching position now for almost ten (10) years. Lee County School Board was still publishing this false unemployment form P. Ex. 9 in the personnel file of Dr. Asam at the time of the lower court trial in 1986, with no explanation attached to P. Ex. 9 stating it was a false document.

The Plaintiff/Appellant respectfully requested to write a Merits Brief in which a more detailed presentation of the elements of stigmatization of her teacher's reputation which violated her liberty rights under the Fourteenth Amendment to the U.S. Constitution and therefore she should receive relief under 42 U.S.C. §1983. As stated in the Jurisdictional Statement by the Plaintiff/Appellant, there are presumed damages when there is libel per se, the pendent count, (See Gertz

v. Robert Welch, Inc. 680 F. 2d 527 (7th Cir. 1982). *

ARGUMENT AND SUBSTANTIALITY OF QUESTIONS

I. The Honorable Supreme Court of the United States does have jurisdiction to review the instant case as an appeal under 28 U.S.C. 1254(2) because the Honorable U.S. Court of Appeals, Eleventh Circuit (86-3142), by affirming the pendent libel per se count, was holding Florida Statute, 119.011(1), state statute invalid and repugnant to the U.S. Constitution, Amendments One, Fifth, and Fourteenth, when the judge of the trial court erroneously directed a verdict concerning the libel per se of Dr. Asam in a public record. According to Florida Stattue, 119.011(1) a teacher's personnel file in a School Board

---

*Since writing the original Motion... filed Oct. 30, 1987, Personnal File of Dr. Asam was checked on Nov. 3, 1987 with a witness and two copies of the false unemployment P. Ex. 9 are still in the personnel file with no attached correction and still stigmatizing Dr. Asam's teacher's reputation since the file is a public record and publication of the false document when the Lee County School Board KNOWS THE SAID P. Ex. 9 document which falsely states on the face of the document that Dr. Asam is "discharged for misconduct connected with work", and is libel per se.

is a public record. See Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist., 1983, which was cited showing personnel file of teacher is public record in Appellant brief (86-3142) to the U.S. Court of Appeals, Eleventh Circuit. see p.40 Jurisdictional Statement 87-531).

CONCLUSION

The Motion Objecting to "Appellees' Motion to Dismiss Appeal and Brief in Support Thereof" should be granted in favor of the Plaintiff/Appellant and the Motion to Dismiss Appeal by the Defendants/Appellees should be DENIED based on the true facts and law in the instant case.

The instant case 87-531 should be reviewed as an appeal by the Honorable Court as shown in the Jurisdictional Statement by Plaintiff/Appellant (case no. 87-531.).

Oral Argument and permission to write Merits Brief has been requested.

Respectfully submitted,

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, Ph.D.,J.D.

CERTIFICATE OF SERVICE (CONTINUED)

Clerk, U.S. Court of Appeals, Eleventh Circuit, 56 Forsyth St. N.W., Atlanta, Georgia 30303 this 9th day of November 1987.

Julia McCain Lampkin Asam

Julia McCain Lampkin Asam, PH.D., J.D.
P.O. Box 1022
University, Alabama 35486

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Jurisdictional Statement Brief was sent to Mr. Harry Blair, 2138-40 Hoople St., P.O. Box 1467, Fort Myers, Florida 33902; Lee County District School Board, Chairman, 2055 Central Ave., Fort Myers, Florida 33901; Mrs. Rayma C. Page, 2412 Kent Ave., Fort Myers, Florida 33907; Mr. Howard DeVore, 3173 Palm Beach Blvd., Fort Myers, Florida 33901; Mr. John William Mills, 2212 River Oak Lane S.E., Fort Myers, Florida 33905; Mr. John F. Beckett, 2925 Cortez Blvd., Fort Myers, Florida 33901; Mr. Robert L. Ratliff, 9464 Lakeview Blvd., North Fort Myers, Florida 33903; Mr. Ray V. Pottorf, 950 Aqua Lane, Fort Myers, Florida 33903; Mr. Vincent DeShazo, 5084 Westminister Dr., Fort Myers, Florida 33907; Clerk, U.S. District Court, Middle District of Florida, U.S. Courthouse, Tampa, Florida 33602; and

[For signature see back of this page for the Continuation of the Certificate of Service.]

APPENDIX

INDEX FOR APPENDIX

Page

APPENDIX A Order on Motion for Summary Judgment with opinion filed Feb. 27, 1984, U.S. District Court, Middle District of Florida, Fort Myers Division, and opinion 1a

APPENDIX B Opinion by Hon. RONEY, Chief Judge, HILL and KRAVTICH, Circuit Judges, U.S. Court of Appeals, Eleventh Circuit, Case no. 86-3142 and 86-3309 entered on April 7, 1987 ..... 6a

APPENDIX A

Filed February 27, 1984

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

JULIA L. ASAM,

Plaintiff

v.

LEE COUNTY DISTRICT SCHOOL BOARD, et al.,

Defendants.

No. 82-91-Civ-Ft.M.-EK

ORDER ON MOTION

FOR SUMMARY JUDGMENT

This cause is before the court upon the defendants' motion for summary judgment. The plaintiff filed the suit under 42 U.S.C. §1983, alleging that the defendant Lee County District School Board had allowed her employment contract as a high school teacher to expire after the 1977-78 academic year.

APPENDIX A (CONTINUED)

Jurisdiction is conferred on this court by 28 U.S.C. §§ 1331 and 1343(3).

After plaintiff's application for unemployment compensation, and in response to the state's routine questionnaire, it is admitted that defendant Vincent L. DeShazo, the Board's director of personnel, checked a box on the form indicating that the plaintiff had been "discharged for misconduct connected with work ...." The choices on the form are apparently not before the court. Upon telephone inquiry by unemployment compensation officials, the defendant DeShazo apparently attempted to clarify the matter by explaining that the school board had allowed the plaintiff's year-to-year contract to expire.

It is acknowledged that DeShazo later filled out a similar form from the unemployment compensation office in which he again noted that the contract has been allowed to expire. De-

APPENDIX A (CONTINUED)

fendant Ray V. Pottorf subsequently sent a copy of the plaintiff's personnel file, including a copy of the initial form with the questioned notation to the Equal Employment Opportunity Commission. Although the plaintiff requested the school board to retract the unemployment form as false, a copy of the uncorrected initial form is alleged to remain in the plaintiff's permanent personnel file. The plaintiff asserts that the defendants' communications, as well as their failure to correct the false statement, resulted in a violation of her liberty interest in her reputation as guaranteed by the Fourteenth Amendment to the United States Constitution.[1]

The court previously dismissed this action against the defendant school board members in their individual capacities. (See court's Order filed April 4, 1983.) In that Order the court noted that the

> "defendants acknowledge that plaintiff's complaint contains allegations sufficient to state a claim under such cases

[1] The plaintiff further requests this court to exercise pendent jurisdiction for libel under state law.

APPENDIX A (CONTINUED)

as Marrero v. City of Hialeah, 625 F. 2d 499 (5th Cir. 1980), and Dennis v. S & S Consolidated Rural High School District, 577 F. 2d 338 (5th Cir. 1978."

Although the defendants have changed their position "in light of Paul v. Davis," and the plaintiff contests the defendants' right to do so, the court need not address that question, as the court finds summary judgment to be inappropriate.

In Paul v. Davis, 424 U.S. 693 (1976), the Supreme Court clearly held that defamation standing alone and apart from any other governmental action will not support a claim for relief under 42 U.S.C. § 1983 and the Fourteenth Amendment. Case law in this circuit, however, has construed Paul v.Davis as establishing a "stigma-plus" test in which the plaintiff must demonstrate an injury to reputation in connection with a right or status previously recognized under state law, in order to implicate Fourteenth Amendment safeguards. See Dennis, 577 F. 2d at

APPENDIX A (CONTINUED)

341.[2]

Although the plaintiff clearly had no state-protected property right in continued employment, the state may not terminate her employment in such a manner as to unfairly damage her ability to seek other employment opportunities. See Board of Regents v. Roth, 408 U.S. 564, 573 (1972). It is that potential infliction of stigma in connection with the state's failure to rehire which remains as a genuine issue of material fact, i.e., whether the "stigma-plus" test has been met. Such an issue prevents summary judgment under Rule 56, F.R.Civ.P. See also Clemons v. Dougherty County, Georgia, 684 F. 2d 1365, 1368 (11th Cir. 1982. Accordingly, the defendants' motion must be denied.

---

[2]In Bonner v. City of Prichard, Ala., 661 F. 2d 1206 (11th Cir. 1981), the Eleventh Circuit adopted as established precedent all Fifth Circuit cases decided before October 1, 1981.

APPENDIX A (CONTINUED)

IT IS ORDERED, therefore, that the motion for summary judgment is DENIED.

/s/Robert D. Morgan

Robert D. Morgan

United States District Judge

Entered: Feb. 27, 1984.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3142

Non-Argument Calendar

JULIA L. ASAM,

Plaintiff-Appellant,

versus

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, and VINCENT DeSHAZO,

Defendants-Appellees.

No. 86-3309

Non-Argument Calendar

APPENDIX B (CONTINUED)

JULIA L. ASAM,

Plaintiff-Appellee,

versus

LEE COUNTY DISTRICT SCHOOL BOARD, RAYMA C. PAGE, HOWARD DeVORE, JOHN WILLIAM MILLS, JOHN F. BECKETT, ROBERT L. RATLIFF, RAY V. POTTORF, and VINCENT DeSHAZO,

Defendants-Appellants.

Appeals from the United States District Court for the Middle District of Florida

(April 7, 1987)

Before RONEY, Chief Judge, HILL and KRAVITCH, Circuit Judges.

PER CURIAM:

Julia L. Asam filed a complaint against the Lee County District School Board and its members, the Lee County Superintendent of Schools, and the Director of Personnel for Lee County Schools. Asam sought money damages and other relief under 42 U.S.C.A. §1983, alleging that her reputation was stigmatized by certain acts of school board personnel,

APPENDIX B (CONTINUED)

and under a pendant state claim for defamation. After a two-day trial, the district court directed a verdict on both counts, and Asam appealed. The defendants appealed the denial of their motion for attorney's fees under 42 U.S.C.A. §1988. Both appeals were consolidated by order of this Court. We affirm.

In May 1978, Asam, an annual contract teacher at North Fort Myers High School, was advised that her contract would not be renewed for the following term. Asam filed an application for unemployment compensation on June 12, 1978, and the Florida Division of Unemployment Compensation (Division) sent a questionnaire to Vincent DeShazo, Director of Personnel for the School Board. DeShazo checked the block on the form entitled "discharged for misconduct connected with work' and noted on the form that Asam's contract was allowed to expire. The form was signed and dated by DeShazo on June 15 and

APPENDIX B (CONTINUED)

mailed to the Division. Asam was contacted by the Division on June 19 and contested the block checked by DeShazo. After being telephoned by the Division, DeShazo immediately advised that Asam had not been discharged for misconduct and mailed a corrected form on June 21.[1] Copies of both forms were placed in Asam's personnel file.[2]

---

[1]There is no form entitled "corrected form" in the personnel file of Dr. Asam at the Lee County School Board. Mr. Harry Blair, attorney for Lee County school Board falsely states in his Reply Brief in the 86-3309 case that "Document #34 is the corrected form" which is a phantom document since the exhibits by the Defendants only went to #27 - see R4 NR 154 2/03/86 entitled "EXHIBIT LIST by Deft." in Docket sheet of the U.S. District Court, Middle District of Florida case no. 82-91 CIV F.M. 17.]

[2]The bottom line is there was never a corrected form in Dr. Asam's Personnel File that stated that the unemployment form signed by Mr. DeShazo on June 15, 1978 was a mistake; the only corrected form was at the unemployment office (P. Ex. 11) and NOT at the School Board's Personnel File of Dr. Asam.

Therefore, the statement by the Honorable panel of the U.S. Court of Appeals, Eleventh Circuit, on p. 3 of their opinion which states above,

..."mailed a corrected form on June 21. Copies of both forms were placed in Asam's personnel file." is an incorrect statement of the facts. See Docket Sheet of U.S. Court of Appeals, Eleventh Circuit, for Memorandum filed by Plaintiff/Appellant on September 12,

APPENDIX B (CONTINUED)

In August 1978, Asam filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging sex discrimination as a basis for her discharge. The School Board submitted a copy of Asam's entire personnel file, including a copy of the incorrect form, to EEOC. The incorrect form, Asam claims, stigmatized her in her attempt to find employment in the teaching profession, and should not have been forwarded to EEOC.

Plaintiff raises 17 claims of error containing 37 subissues on this appeal. These claims were examined individually but have been con-

---

[Footnote 2 (Continued)]
22, 25 (entered 26), and on October 10 and 14, 1986 explaining Mr. Blair's deceptive practice because there was no corrected unemployment document in Dr. Asam's personnel file that stated it was a correction.

Note the form in question on June 21 was stamped received June 21, 1978 by PERSONNEL and the said form was mailed from the unemployment office to Lee County School Board c/o Personnel Director and was mailed on 6/19/78 and is entitled REIMBURSABLE. (See P. Ex. 82 index p. 2 and the said REIMBURSABLE is listed as item 62 by the Lee County School Board index and no mention is made of any corrected form for P. Ex. 9, the false unemployment form stating that Dr. Asam was "discharged for misconduct connected with work" when there was no misconduct. The Reimbursable form does not state on the face of it that it is a corrected form. The Lee

APPENDIX B (CONTINUED)

solidated for this discussion. First, plaintiff claims that the district court erred in granting the defendants' motion for directed verdict at the close of plaintiff's case in chief. In reviewing the grant of a direc- verdict,

> The court must view all the evidence, together with all logical inferences flowing from the evidence, in the light most favorable to the non-movant.
> If the facts and inferences point so strongly and overwhelmingly in favor of one party that the Court believes that reasonable men could not arrive at a contrary verdict, granting of motions is proper. On the other hand, if there is substantial evidence opposed to the motions, that is, evidence of such quality and weight that reasonable and fair-minded men in the exer-

---

[Footnote 2 (Continued)]

County School Board incorrectly has listed on item 62 in P. Ex. 82, the personnel file, that Mr. DeShazo signed 6/19/78 which is impossible since the item 62 is stamped received June 21, 1978 Personnel[This is the Personnel of the Lee County School Board]. The point is that this Reimbursable document stamped received June 21, 1978 Personnel does not on the face of the document state it is a corrected form of the unemployment false document (P.Ex. 9). P. Ex. 9 in the index is item 61 in index of P. Ex. 82 and is listed as item 61 "Unemployment Compensation form signed by Vincent DeShazo 6/15/78 (2 copies)". Therefore, Lee County School Board retained two false documents (P. Ex. 9) in the Personnel File of Dr. Asam.]

APPENDIX B (CONTINUED)

> cise of impartial judgment might reach different conclusions, the motions should be denied, and the case submitted to the jury.

Love v. Sheffield, 777 F. 2d 1453, 1454 (11th Cir. 1985), quoting Boeing Company v. Shipman, 411 F. 2d 365, 374-75 (5th Cir. 1969) (en banc). A careful review of the record reveals that the act which formed the basis of the claim for liability was a mistake[3] The erroneous report to the Division was corrected immediately upon notification by telephone and shortly thereafter with a correctly com-

---

[3The U.S. Court of Appeals, Eleventh Circuit, is correct that the basis of the claim for liability started with a mistake; however, the U.S. Court of Appeals, Eleventh Circuit did not carefully review P. Ex. 82 and note that P. Ex. 11, the true corrected unemployment document is not in the Personnel File of Dr. Asam. The point is that the Lee County School Board through Mr. DeShazo corrected immediately the mistake in P. Ex. 9 and the said correction remained in the unemployment office and was NEVER IN THE PERSONNEL FILE of Dr. Asam at the Lee County School Board. There is no form in the Personnel File of Dr. Asam that states that it is the corrected form of the false unemployment form (P. Ex. 9) — see P. Ex. 82, the personnel file, p. 2 for index items 61 and 62.]

APPENDIX B (CONTINUED)

pleted form.[4] There was no effective stigmatization arising from transmission of plain-

[4]The point is the corrected form was NEVER IN THE PERSONNEL FILE of Dr. Asam at the Lee County School Board which is known as P. Ex.11 (Note by reviewing P.Ex.82 - the personnel file of Dr. Asam that there is not a document such as P. Ex. 11, the true correction by Mr. DeShazo only at the unemployment office).
The point is what started as a mistake (P. Ex. 9) escalated to stigmatization when the Lee County School Board failed to remove the said false document (P. Ex. 9) after notice (Exhibit 4 of Defendants Exhibits but the Exhibit 4 was a letter by Dr. Asam dated May 7, 1982. On May 7, 1982 before filing the instant underlying case, a demand was made to the Lee County School Board to remove said false unemployment form from the Personnel File of Dr. Asam (See Exhibit 4 of Defendants' Exhibits, which was written by Dr. Asam to School Board). Even after this notice on May 7, 1982 which was an update of a letter on Sept. 20, 1978, the Lee County School Board refused to remove the false unemployment form and did not make a corrected form after demand for removal of said false unemployment form. At this time the mistake escalated to stigmatization because the Lee County School Board ratified Mr. DeShazo's actions and was knowingly maintaining a false document in the Personnel File of Dr. Asam without a corrected form stating that P.Ex. 9 was incorrect or without removing P. Ex. 9 from the Personnel File of Dr. Asam. The U.S. Court of Appeals, Eleventh Circuit did not carefully review the record or they would have also noticed that the P. Ex. 9 (item 61) in the Personnel File of Dr. Asam (P.Ex. 82) is in the personnel file in duplicate with no document stating that P. Ex. 9 has been corrected.

The point is the U.S. Court of Appeals, Eleventh Circuit was mislead by the phantom document #34 by Mr. Blair in his Reply Brief in the related case 86-3309 consolidated with 86-3142. The U.S. Court of Appeals, Eleventh Circuit, was notified as stated in the footnote above about the non-existing #34 document which was

APPENDIX B (CONTINUED)

tiff's file to EEOC.[5] Additionally, during the four-year period from her termination to the filing of this law suit, a review of personnel file reflects only one written inquiry[6] from a prospective employer. The re-

---

[Footnote [4] Continued]
not accepted into evidence and has never been seen by Dr. Asam. (see docket sheets of 86-3142 in the U.S. Court of Appeals, Eleventh Circuit, the Memorandum by Dr. Asam after the Reply Brief to 86-3309 was filed by Mr. Harry Blair, Attorney, for the Lee County School Board.]

[[5]There is no proof that there was no effective stigmatization arising from transmission of plaintiff's file to EEOC since collateral issue - the EEOC may not have pursued the case because of the false document now known as P. Ex. 9. It was the EEOC that told Dr. Asam that the false document now known as P. Ex. 9 was in the personnel file since Dr. Asam did not know it was in the personnel file until EEOC gave her a copy of P. Ex. 9.
The point is the Personnel File of Dr. Asam was a public record according to Florida Statute 119.011(1) as stated in Dade County School Board v. Miami Herald Pub. Co. 443 So. 2d 268 (DCA of Fla. 3rd Dist., 1983), and therefore is a permanent publication. (See composite exhibits, P. Ex. 107, 108, and 109 showing enormous number of positions applied for by Dr. Asam and no one hired her when she had the highest qualifications - i.e. Rank I as a teacher's certification.)]

[[6]See p. 13 of Appellant Brief, U.S. Court of Appeals, 11th Circuit 86-3142 showing in detail how Ms. Rayna Page, Chairman of the Lee County School Board, gave an example of how information the personnel file kept a teacher from being hired - Ms. Page said..." word of mouth got around and she didn't get hired ... (P.

sponses to the prospective employer only stated the dates of plaintiff's employment. No reference was made to the challenged incorrect form and there is no evidence that a prospective employer was ever made aware of its existence. When viewing the evidence in the light most favorable to the plaintiff, a directed verdict was proper.

Second, plaintiff asserts errors involving evidentiary rulings by the district judge. The district court is empowered with broad discretion in determining the admissibility of evidence and will be reversed only if its discretion has been abused. Loughan v. Firestine Tire & Rubber Co., 749 F. 2d 1519, 1524

[Footnote 6 continued]

Ex. 154, p. 37 l. 25). Therefore, one letter in the Personnel File of Dr. Asam concerning an inquiry is not a true answer when said filed is RETAINED BY DEFENDANTS and the Defendant Ms. Page admitted that word of mouth was the way a teacher is not hired from a bad record in personnel file. This false document (P. Ex. 9) definitely stigmatized Dr. Asam in her "Request for Transfer". (See D. Ex. 8 showing Request for Transfer checked.)]

APPENDIX B (CONTINUED)

(11th Cir. 1985). A review of the record reveals no abuse of the court's discretion.[7]

Third, plaintiff claims that the district court erred in denying her leave to amend her complaint. District courts exercise broad discretion when determining whether an amendment to the complaint should be allowed, once responsive pleadings have been filed, and a district court's denial of a motion to amend will be reversed only on a clear showing of an abuse of discretion. See Henson v. Columbus Bank & Trust Co., 770 F. 2d 1566, 1574 bus Bank & Trust Co., 770 F. 2d 1566, 1574 (11th Cir. 1985). Plaintiff's motion to amend was filed after extensive pretrial activity and more than three years after the filing of the initial complaint. The district court

[7The bottom line is that the Hon. Judge Morgan abused his discretion when he verbally attacked Dr. Asam in open court when the judge said for no reason "You are your own worst enemy" (R7 376 l. 8). See Statement of Facts this Brief for other abuse of discretion by the Hon. Judge Morgan, who denied the post-trial motions and then the judge recused himself from any further proceedings. See APPENDIX E].

was within its discretion in denying that motion.

Finally, plaintiff complains that the district court ordered a bifurcated trial with respect to the issues of liability and damages, and that the court allowed the defendants to examine plaintiff's witnesses during plaintiff's case in chief with respect to matters not covered on direct examination so that they would not have to be recalled during the defendants' case in chief. Both of these matters are within the sound discretion of the district court. See Fed. R. Civ. P. 42(b); T.D.S., Inc. v. Shelby Mut. Ins. Co., 760 F. 2d 1520, 1535 (11th Cir. 1985) (district court's decision on separate trials will not be disturbed absent an abuse of discretion); and United States v. Davis, 546 F. 2d 583, 593 (5th Cir.), cert. denied, 431 U.S. 906 (1977) (the scope of cross-examination is a matter within the trial judge's sound discretion). The district court's rulings on these points cannot be

APPENDIX B (CONTINUED)

faulted under the absue of discretion standard of review.

The defendants appeal the denial of attorneys's fees by the district court and have filed a motion for attorney's fees in this Court. The award of attorney's fees under 42 U.S.C.A. §1988 is within the discretion of the district court and will not be reversed absent a showing of clear abuse of discretion. See Dowdell v. City of Apopka, Florida, 698 F. 2d 1181, 1187 (11th Cir. 1983). No abuse is shown on this record. Defendants' motion for attorney's fees on this appeal is DENIED.

Because the district court neither misapplied[8] the law nor abused its discretion, the judgments in 86-3142 and 86-3309 are due to be AFFIRMED.

[8The point is that the Hon. Judge Morgan misapplied the law in Clemons v. Doughterty County, Georgia, 684 F. 2d 1365, (11th Cir. 1982), because the same Judge Morgan of the U.S. District Court, Middle District of Florida, who denied the Summary Judgment for Defendants, granted a Directed Verdict for Defendants on the same facts i.e. stigmatization issue (R2 58 1-3) when summary judgment is precluded by Clemons v. Dougherty County, Georgia 684 F. 2d 1365, (11th Cir. 1982).]